



Town of Holden Beach
Board of Commissioners
Regular Meeting

Tuesday, March 21, 2017
7:00 PM

Holden Beach Town Hall
Public Assembly



TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS' REGULAR MEETING
HOLDEN BEACH TOWN HALL – PUBLIC ASSEMBLY
TUESDAY, MARCH 21, 2017 - 7:00 P.M.

1. Invocation
2. Call to Order/ Welcome
3. Pledge of Allegiance
4. Agenda Approval
5. Approval of Minutes
 - a. Minutes of the Regular Meeting of February 21, 2017 (Pages 1 – 8)
6. Public Comments on Agenda Items
7. Police Report – Chief Wally Layne (Page 9)
8. Beach Ambassador Program Recommendation – Peggy Schiavone, Chair of the Parks and Recreation Advisory Board (Page 10)
 - a. Discussion and Possible Action on Recommendation – Commissioner Freer
9. Discussion and Possible Approval of Ordinance 17-04, An Ordinance Amending Section 94.03 of the Holden Beach Code of Ordinances, Frontal Dune Policies and Regulations – Building Official Evans (Pages 11 – 12)
10. Discussion and Possible Action on Encroachment Agreement between the Town and Windell Ray and Caryn Michelle Gibson – Town Clerk Finnell (Pages 13 – 16)
Mr. & Mrs. Gibson desire to encroach upon the Hillside Drive public right-of-way owned by the Town for the purpose of constructing a walkway to cross the dunes and gain access to the beach.
11. Discussion and Possible Approval of Resolution 17-03, Resolution Supporting Seasonal Population Adjustment Factor Sales Tax and Other State Revenue Distribution – Fiscal Operations Clerk Lockner (Pages 17 – 21)
12. Discussion and Possible Approval of Resolution 17-04, Resolution Supporting Dedicated State Revenue Source for Beach Nourishment – Shoreline Protection and Recreation Manager Ferguson (Pages 22 – 24)
13. Guest Speaker – Captain Cane Faircloth, Representing Area Boaters - Concerns Regarding the Lockwood Folly Inlet (Town Manager Hewett) (Pending Request) (Page 25)

14. Discussion and Possible Approval of Resolution 17-05, A Resolution Amending the Fee Schedule for the Town of Holden Beach – Fiscal Operations Clerk Lancaster (Pages 26 – 28)
The proposed amendment would change the fee structure for vehicle decals.
15. Discussion and Possible Action on Lease Extension Proposal for T-Mobile – Fiscal Operations Clerk Lockner (Pages 29 – 34)
16. Town Manager’s Report
17. Mayor’s Comments
18. Board of Commissioners’ Comments
19. Public Comments on General Items
20. Executive Session to Discuss a Personnel Matter Pursuant to North Carolina General Statute 143-318.11(a)(3)
21. Adjournment



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
REGULAR MEETING
TUESDAY, FEBRUARY 21, 2017**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Regular Meeting on Tuesday, February 21, 2017 at 7:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem John Fletcher; Commissioners H. Ashley Royal, Peter Freer, Kim Isenhour and Ken Kyser; Town Manager David W. Hewett; Town Clerk Heather Finnell; Police Chief Wally Layne; Public Works Director Chris Clemmons; Shoreline Protection & Recreation Manager Christy Ferguson; Administrative Assistant Kendra McDonald; and Town Attorney Noel Fox.

Mayor Holden asked for a moment of silence and then called the meeting to order.

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

Commissioner Freer would like to move item 14, Guest Speaker: Mike Sullivan – HB Property Owners Association – FEMA Flood Maps in front of item 8, Discussion and Possible Approval of Resolution 17-01, Resolution Urging Action on the FEMA Flood Map Process.

Motion by Mayor Pro Tem Fletcher to approve the agenda as amended; second by Commissioner Isenhour; approved by unanimous vote.

APPROVAL OF MINUTES

Motion by Commissioner Royal to approve the minutes of the Regular Meeting of January 17, 2017 as written; second by Commissioner Freer; approve by unanimous vote.

Town Manager Hewett pointed out that the Board neglected to establish a time for the workshop on March 15th. He asked that the Board set a time during his report.

Motion by Commissioner Freer to approve the minutes of the Special Meeting of January 23, 2017 as written; second by Commissioner Royal; approved by unanimous vote.

PUBLIC COMMENTS ON AGENDA ITEMS

Mark Fleischhauer said he is here to discuss item 9, Sunset Slush's request to sell Italian ice on the strand, on behalf of his wife, Karen. He read an excerpt from a letter she wrote in 2008 when the topic came up at that time. He said commercial activities should be contained within the designated zones.

Beverly Compton said commercialization is a slippery slope. She thinks Holden Beach is good for what we don't have.

Sheila Young said several years ago a parasailing company and a food vendor requested permission to do business on the beach; neither was approved. Soon after the request was denied, a fatal accident occurred with the parasailing company that wanted to do business here. Several years later, Sunset Slush requested again and it was not approved. She said the vendor seems to have a well-established business. Ms. Young said many choose Holden Beach because it is less commercial. She asked if this is allowed, will others follow. She said it is up to the Board to make the best choices for the Town.

Irvin Woods said he intentionally built his house 4' above base flood elevation. He said it is currently in a VE Zone and will go to an AE Zone with the new maps. Mr. Woods said this has been dragging out a long time. He urged the Board to do whatever they can to get the maps approved. Mr. Woods said he is fully supportive of item 13, Lockwood Folly dredging. He said if his numbers are right, it is a sweet deal; any time you can get sand at that price you ought to do it.

POLICE REPORT – CHIEF WALLY LAYNE

- A month ago was feeling pretty good about break-in season. Since that time, we had six. Provided details on the break-ins. To date, we do not have a suspect. It is happening in the county and other beaches. The South End Task Force is working diligently. If you see something that doesn't look right, please give us a call so we can investigate it. It is an average of one a week. None reported this week. If he owned an oceanfront home and someone wasn't there fulltime, would have an alarm system.

GUEST SPEAKER: MIKE SULLIVAN – HOLDEN BEACH PROPERTY OWNERS ASSOCIATION (HBPOA) – FEMA FLOOD MAPS

Mike Sullivan, HBPOA, said just about everyone on the island will be affected when the maps are moved from the preliminary to the effective stage. He provided background on the process and provided statistics on how the new maps would benefit Holden Beach. He stated Town Manager Hewett explained at the last meeting, that the anticipated implementation of the maps had been postponed indefinitely. HBPOA has some simple suggestions. They request the Board take a proactive role by getting our senators and congressman involved and sending FEMA representatives a letter. The HBPOA will have a form letter available on their website for people to send out. Mr. Sullivan is happy to see that the resolution incorporating the suggestions is on the agenda.

DISCUSSION AND POSSIBLE APPROVAL OF RESOLUTION 17-01, RESOLUTION URGING ACTION ON THE FEMA FLOOD MAP PROCESS

Commissioner Freer stated he has been speaking to the HBPOA, individuals that are affected and realtors. He knows a lot of activity behind the scenes has been happening, but agrees it is time to get proactive and raise our voices to anyone who will listen. He stated a question came up on the date in the first paragraph. He asked if they were first published in August 2014. Town Manager Hewett explained both dates are correct. Brunswick County had its preliminary maps done first in August 2014 and then the rest of the state followed. Commissioner Freer asked if we could add the August 2014 date as related to Brunswick County. Commissioner Royal doesn't want to have something in the resolution that isn't correct and can be challenged, so he wants to make sure we use the correct date. The Board discussed the date. Commissioner Freer suggested changing the first paragraph to start with The Federal Emergency Management Agency ("FEMA") and North Carolina Emergency Management ("NCEM") issued new preliminary flood maps for the Town in August 2014 ~~and other affected communities in the State in 2016.~~ Commissioner Isenhour asked if the process is that the maps have to be approved for the entire county at the same time. Town Manager Hewett replied that it is on a panel basis, by county. He said FEMA is working through appeals. Commissioner Isenhour added there are some areas in the county that will not benefit from the new maps. Commissioner Freer talked about how the resolution could be communicated to the County Commissioners. The Board discussed the resolution. Town Manager Hewett said in regards to the monthly status report, please don't look at that as the staff is responsible for FEMA getting the maps done. Staff has communicated at a bunch of different levels on the map. He clarified his understanding of the wording on Commissioner Freer's proposed change to the resolution.

Motion by Commissioner Freer to approve Resolution 17-01 as amended; second by Mayor Pro Tem Fletcher; approved by unanimous vote.

GUEST SPEAKERS: SELLERS FAMILY – OWNERS OF SUNSET SLUSH – SELL ITALIAN ICE ON THE BEACH STRAND

Susie Sellers said she understands the concerns people have, but every year customers ask why they aren't on the beach strand. She provided details on their business. It will be their 8th season on the beach. Her son, Devon, explained their proposal to provide service on the beach. Her other son, Drew, talked about their business and how they control trash on the beach. In addition to picking up trash on the beach, they sponsor a Trash Bash on Ocean Isle Beach. Mrs. Sellers stated the tourists want the service.

Commissioner Royal inquired if their business model requires them to sell on the beach. The Sellers answered no. Commissioner Royal asked if their current business would be in jeopardy if they don't sell it on the beach. Mrs. Sellers replied no. She said it would enhance their business. Commissioner Freer said the key is regulations that control. Devon stated they would be willing to work with whatever regulations the Town is comfortable with. Mrs. Sellers talked about Ocean Isle's regulations. Commissioner Freer asked about a one year pilot. Mrs. Sellers replied they are willing to do whatever the Board asks of them to have the opportunity. Commissioner Freer would like to have all information before a decision is made. Commissioner Isenhour said she has a lot of legal questions. She would like to know if it is okay if the Town says for example we will permit three food carts and we prevent businesses that are not established on the island from getting them. Attorney Fox explained there are lots of different approaches to beach

services. She provided examples. She said the Town has a prohibition on peddlers. Commissioner Freer thinks the biggest attraction for this is that this company has a presence on the beach. Mayor Pro Tem Fletcher asked if it could be an issue to stop in front of ice cream shops. Attorney Fox thinks there are a number of factors the Board will want to consider in awarding contracts. Commissioner Freer thinks the next step would be for Attorney Fox to work with the staff to come up with the options so an informed decision could be made.

Commissioner Kyser had a point of order question. He said the agenda said guest speaker, not debate. He asked if it is appropriate. Mayor Holden agreed with the point of order.

DISCUSSION AND POSSIBLE ACTION ON ORDINANCE 17-01, AN ORDINANCE ENACTING AND ADOPTING A SUPPLEMENT TO THE CODE OF ORDINANCES OF THE TOWN OF HOLDEN BEACH

Town Clerk Finnell explained Ordinance 17-01 would adopt Supplement 15 to our Code of Ordinances. The supplement codifies all amendments since the last supplement.

Motion by Mayor Pro Tem Fletcher to approve Ordinance 17-01, Enacting and Adopting a Supplement to the Code of Ordinances; second by Commissioner Isenhour; approved by unanimous vote.

DISCUSSION AND POSSIBLE APPROVAL OF SOLID WASTE CONTRACT BETWEEN THE TOWN AND WASTE INDUSTRIES

Administrative Assistant McDonald explained the only change is a 2% increase on some of the fees and possibly getting rid of the yard waste collection. If the Board doesn't want to get rid of it, staff suggests bidding the service out to control costs. Commissioner Kyser asked about yard waste service. Administrative Assistant McDonald said it is \$0.98 per residence, per pick-up. Only 200 – 300 properties participate. Town Manager Hewett said it is about \$14,000 a year for yard waste. Commissioner Kyser said he and the people on his street utilize the service. Commissioner Freer asked if the Town could use a different model since we have history that not everyone uses the service. Administrative Assistant McDonald said Waste Industries said it was not cost efficient for them to provide the service. Public Works Director Clemmons added the cost would double if Waste Industries keeps the service in the contract. Commissioner Royal said we do have a precedent of people paying for recycling if they choose to recycle. Paying for yard waste could be an alternative. Town Manager Hewett said we haven't put together a statement of work. If the Board desires to provide the service, we would cost it separately. The Board talked about recycling services. Town Manager Hewett said in September we will have a year's worth of data (amount of time since the centralized recycling was removed). At that time he would like to assemble a stakeholder group to look into the service level requirement. Attorney Fox said in Section 2 of the contract, the word exclusive should be removed; in the 2nd paragraph it should say Holden Beach, not Brunswick County; and the contract needs to have a pre-audit statement.

The Board voted 4 – 1 to approve the contract amended with Attorney Fox's suggestions with Mayor Pro Tem Fletcher, and Commissioners Royal, Freer and Isenhour voting for the motion and Commissioner Kyser voting in the negative.

DISCUSSION AND POSSIBLE APPROVAL OF RESOLUTION 17-02, RESOLUTION APPROVING THE BRUNSWICK COUNTY GREENWAY, BIKE ROUTES AND PADDLE TRAIL PLAN

Shoreline Protection and Recreation Manager Ferguson provided background on the countywide plan. The Town participated by paying \$500 to be included in promotional material. The county is looking for a resolution of support from all of the communities that agreed to participate.

Motion by Commissioner Royal to approve Resolution 17-02; second by Mayor Pro Tem Fletcher; approved by unanimous vote.

DISCUSSION AND POSSIBLE APPROVAL OF LOCKWOOD FOLLY DREDGING PIGGYBACK PROJECT

Shoreline Protection and Recreation Manager Ferguson stated the Corps will be performing navigation maintenance at the Lockwood Folly Inlet channel and fifty feet of the widener at the AIWW inlet crossing. Staff will be meeting with them tomorrow to discuss the location of the pipeline on the beach. The Corps/ will be using the least cost method of disposal to place the sand on the east end of Holden Beach. They have approached the Town about piggybacking on the project. The Town would be able to use the Corps' state memorandum of agreement, which means we don't need to dip into our permits. The NC Division of Water Resources pays two thirds of the estimated cost, making the local match \$152,000. The county agreed to pay half, which would leave \$76,000 for the Town's portion. Shoreline Protection and Recreation Manager Ferguson stated staff believes the additional 60,000 cubic yards at the decreased cost per yard is worth capitalizing on.

Commissioner Freer asked if the Town has done this before. Shoreline Protection and Recreation Manager Ferguson replied in 2014. Town Manager Hewett added probably many times more before that. Commissioner Royal asked about the county. Shoreline Protection and Recreation Manager Ferguson said the county has already voted on and approved their portion.

Motion by Mayor Pro Tem Fletcher to approve Ordinance 17-02; second by Commissioner Isenhour; approved by unanimous vote.

DISCUSSION AND POSSIBLE ACTION ON DEVELOPING REGULATIONS ON SHARK FISHING

Mayor Pro Tem Fletcher stated after he heard the presentation from Oak Island where people are shark fishing from the beach and two people were bit, he thinks the Town should lead the way setting regulations saying we don't allow shark fishing anywhere on the beach, on the Intracoastal Waterway from the island or from the pier. Attorney Fox stated there are two components in regulating shark fishing. The Division of Marine Fisheries is the state component and they basically follow the federal regulations regarding sharks. She placed a call to the Division of Marine Fisheries. Their position is they regulate it. The Town doesn't have enabling legislation to adopt a local ordinance. There is some distinction between fishing and chumming. She could look into the possibility of adopting an ordinance on that. Commissioner Royal said his interest would be doing something on the chumming if the Town has appropriate jurisdiction. Chief Layne stated the year Oak Island had the two shark bites was an unusual year for sharks. He provided information on those circumstances. He is not sure a regulation would have an impact on

shark bites. Commissioner Kyser would be opposed to chumming. Commissioner Isenhour asked Attorney Fox to find information about chumming.

TOWN MANAGER'S REPORT

- The Central Reach Project cleared the pier over the weekend. Looks like we are about 65% of the way done.
- FEMA Matthew Damages – the project worksheet the Town submitted to try and capitalize on the dredge's presence and not having to mobilize cleared the Office of Legislative Affairs late last week. He understands it is now in the Office of Management and Budget.
- Bridgeview Park – broken ground on the picnic shelter. The estimated completion date on the facility is April 1st.
- Sewer Vulnerability Assessment - Michael Norton met with staff. We assembled a whole bunch of documents. He benchmarked Sunset Beach's and Oak Island's operations. Looking at the end of March for a deliverable on the report.
- Intended to send decals out in March, with a limit of two. Couldn't get the Fee Schedule amended in time so it looks like it will be the April timeframe. By reducing the supply, we believe it will get their attention. It would be two free. You could buy another two to get a total of four. There is not a need for more than two vehicles when we are controlling access to the beach. After discussion, the topic will be a March agenda item.
- The Board agreed to hold the March 15th budget meeting at 9:00 a.m.

MAYOR'S COMMENTS

- Heard nothing but positive comments from property owners and visitors on the sand project. It is such a good project. The shell seekers are more than happy. Doesn't think he has ever seen as many people on the stand in February as now.
- Has one concern. Asked if he is still the person representing the Town when there is a legal meeting for a mayor of a town in a closed session. If a commissioner is going to sit in his chair in a closed, legal meeting he would appreciate the forewarning and would like to have the opportunity to understand it so he won't be embarrassed. He would like to know about it ahead of time.
- Need a spokesperson for the Town. When this administration took office, Congressman McIntyre offered his services. We have nobody speaking for the Town in Washington or Raleigh. We are playing catch up in regards to the flood insurance, wind and hail and so forth. He is pleading with the Town to hire someone to speak for us in these meetings. We do not have anyone anymore. To get things done you need someone carrying the ball for you. Encouraged the Board if they do not want McIntyre to find someone who has the connections, knowledge and know how to help the Town. With all due respect, letters will not get the Town priority. If you do not have a personal relationship with those in power, you will not get anything. He said nothing is going to speed up the flood maps. Was the first to tell you last year that they wouldn't be delivered on time. He said you are not going to get the maps this year. The only whisper he heard is maybe December, no later than February next year. Sharing a summary of the knowledge he has. We need all of the interested parties to help. Individual phone calls and letters are good. Our map crosses the waterway. When we send a letter about Holden Beach you need to be careful. You need to have people with knowledge and expertise talking for us at the right places at the right time.

Need to get a game plan together and implement the game plan. When he was Congressman McIntyre's spokesperson/ manager for Brunswick County for 18 years, he went to a lot of meetings. We received millions of dollars for Holden Beach with the help of Town Manager Hewett and some others. That money is gone and we have nobody trying to get it for us.

BOARD OF COMMISSIONERS' COMMENTS

Mayor Pro Tem Fletcher

- Was here when Congressman McIntyre made his comments, was surprised a motion wasn't made to hire him. Knows he went to another island and was hired.
- Asked if Mayor Holden was suggesting the Board held a closed meeting without him. Mayor Holden replied no, he is talking about a closed meeting that was not a Town meeting and someone was there in his place. Mayor Pro Tem Fletcher asked if he was talking about the investigation. He said he was invited by the District Attorney.
- Thanks for coming to the meeting tonight.

Commissioner Royal

- Good to see everyone here tonight. It indicates interest, it is a good thing.
- Will strongly consider some of the things heard tonight. One of the things that comes to his mind over the past year is that people serve a two year term. His understanding is previous boards had terms that overlapped each other. From his own personal perspective, believes it casts undue hardship on Town staff. Seriously considering reinstating staggered terms so that the members would have more experience and could possibly make better decisions. Has no aspirations of enacting anything that would extend the current term. Believes we need to consider implementing staggered terms.

Commissioner Freer

- Thanked everyone for coming.
- Appreciates the input from the HBPOA and the rest of the community on the FEMA flood maps. Understands it means a lot to the community and they are doing everything they can to make that effective as soon as possible.

Commissioner Isenhour

- Thanked the staff for their hard work this past month. Understands the Valentine's Dance was a huge hit.

Commissioner Kyser

- Thanked everyone for coming tonight.
- Expressed the desire for the Board to put an item on the agenda to see if there is any public interest on yard debris pick-up.

PUBLIC COMMENTS

Peter Pallas is in favor of Sunset Slush peddling on the beach. It needs to be regulated. We are a growing community and he thinks it would be a great thing to have a business on the beach picking up trash and providing a service.

Sheila Young said in regard to the McIntyre comment, we do have a representative, Congressman Rouzer. She said it might be nice if he would get down here to see what we need from him as our representative. Ms. Young said it is a shame we don't have the Brunswick Beaches Consortium anymore to work on common goals and lobbying. She said apparently the new group is falling apart. Mayor Holden stated he will be meeting with Congressman Rouzer later this week. He added the new group meets quarterly. He thanked Ms. Young for her time and effort on that board.

Lewis Mitchell stated he thinks Commissioner Royal has a good point with staggered terms and it should be considered.

Larry Blume said he has a few big bundles of limbs that he was holding. He would like to see yard waste picked up.

EXECUTIVE SESSION TO DISCUSS A PERSONNEL MATTER PERSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(3)

Town Clerk Finnell read the reason to hold Executive Session.

Motion by Mayor Pro Tem Fletcher to go into Executive Session at 8:55 p.m.; second by Commissioner Royal; approved by unanimous vote.

OPEN SESSION

The Board went back into Open Session at 10:10 p.m. Mayor Holden announced that no action was taken.

ADJOURNMENT

Motion by Commissioner Royal to adjourn at 10:10 p.m.; second by Commissioner Freer; approved by unanimous vote.

J. Alan Holden, Mayor

Attest:

Heather Finnell, Town Clerk

Activity Log Event Summary (Cumulative Totals)

HOLDEN BEACH POLICE DEPT.

(02/01/2017 - 02/28/2017)

| | | | |
|--|----|----------------------------------|---|
| 911 Hang Up/Open Line | 2 | Alarm Activation | 7 |
| Animal Complaint | 1 | Assist Motorist | 3 |
| Assist Other Agency | 15 | Attempt to Locate-ATL | 2 |
| EMS/Medical Call | 2 | Fire Call | 1 |
| Found Property | 1 | Incident Report | 3 |
| Keep Check | 23 | Maintenance/Water Leaks(HB Only) | 2 |
| Motor Vehicle Crash (Property Damage Only) | 1 | Noise/Nuisance Complaint | 1 |
| Open Door | 2 | Parking | 1 |
| Phone Call (requested to call subject) | 10 | Suspicious Activity | 3 |
| Suspicious Person | 1 | Suspicious Vehicle | 3 |
| Trespassing | 1 | | |

Total Number Of Events: 85



Date: February 22, 2017

To: Commissioners and Mayor Holden

From: Peggy Schiavone, Parks and Recreation Advisory Board, Chair

Re: Possible Beach Ambassador Program

ps

The Parks and Recreation Advisory Board met for their regular meeting, February 2, 2017 with a presentation provided from Oak Island on their Beach Ambassador Program. The Parks and Recreation Advisory Board then met again for a special meeting on Wednesday, February 22, 2017 for discussion and a recommendation to the Board of Commissioners regarding the program.

The board discussed pros and cons of the program at length. Cons were discussed first and included the following:

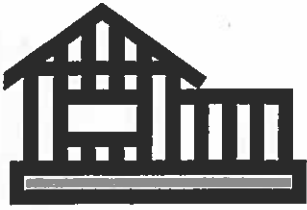
- Limited volunteer pool to pull from to meet the requirements of the program
- Costs to Town and Liability Questions
- Would have to call the police anyway if a problem arose
- Who would run and organize it

Pros to the program were discussed as follows:

- It is a nice idea to pass along information for a public relations purpose

Recommendations

Member Becky Willis made a motion to not proceed with a beach ambassador program and to see what the police chief can come up with about a second officer during the prime time season and if that can't occur to revisit the program. Member Melanie Champion stated she didn't think the board should revisit and discussion occurred. The motion was withdrawn. Member Champion made motion to see what the police chief can come up with about a second officer during the prime time season. Member Lohman seconded the motion. The vote was unanimous.



Town Of Holden Beach

PLANNING & INSPECTIONS DEPARTMENT

Tuesday, March 14, 2017

MEMO: Public Walkways

Subject: Walkway Exception for Dune Protection

At the request of the Board of Commissioners, and pursuant to the community's interest, the BOC of Holden Beach so requested a draft to the walkway ordinance for consideration.

The Exception as written was reviewed by the Planning staff and Town Attorney and is presented as an alternative to the current ordinance for protection of environmental sensitive areas.

The recommendation provides the best protection against abnormal erosion and human impact on those areas of the vegetation that is crucial for the protection of properties.

Timothy D, Evans, CPM, BIII

Director
Tim Evans
Tevans@hbtownhall.com

Assistant Inspector
Rhonda Wooten
Rwooten@hbtownhall.com

Permits Administrator
Pam Powell
planninginspections@hbtownhall.com

TOWN OF HOLDEN BEACH
ORDINANCE 17-04

AN ORDINANCE AMENDING THE HOLDEN BEACH CODE OF ORDINANCES, CHAPTER 94: BEACH REGULATIONS

BE IT ORDAINED BY the Mayor and Board of Commissioners of the Town of Holden Beach, North Carolina that the Holden Beach Code of Ordinances, Chapter 94: Beach Regulations, be amended as follows:

Section One: Amend Section 94.03(C)(2)(a)(6) as follows (changes in red):

No structure other than the four-foot wide wooden walkway shall be located south of the landward toe of the frontal dune. This applies to decks, gazebos, **sifting sitting** areas and other additions that a property owner may desire to make to the allowed walkway. Structures (other than the four-foot walkway) that exist when this section is adopted may remain in place temporarily; however, all such structures must be removed no later than December 31, 2003, in order to be in compliance with this section. A building permit is required if there are any repairs needed to walkway load bearing surfaces, such as supporting posts. Adding additional lengths to supporting posts shall constitute a repair. **Exception: Town owned CAMA accessways may utilize a 6-foot walkway. Exception: Property Owners with lots that have more than 400 feet from the seaward toe of the frontal dune to the last line of natural stable vegetation, as determined by the local CAMA officer, may install a single walkway with a maximum width of 3 feet; the walkway shall be a minimum of 3 feet high with a maximum height not to exceed 4 feet; and shall terminate at the last line of natural stable vegetation. Walkways shall be permitted and built in accordance with all Federal, State and local building requirements.**

Section Two: The Town Clerk is directed to forward this ordinance to American Legal Publishing for inclusion in the next published supplement to the Holden Beach Code of Ordinances.

Section Three: This ordinance shall be effective the 22nd day of March, 2017.

Adopted this the 21st day of March, 2017.

ATTEST:

J. Alan Holden, Mayor

Heather Finnell, Town Clerk



Date: March 13, 2017

To: Commissioners and Mayor Holden

From: Heather Finnell, Town Clerk HF

Re: Encroachment Agreement

The property owners at 226 Ocean Boulevard ^{East}~~West~~, Mr. & Mrs. Gibson, desire to encroach upon the Hillside Drive public right-of-way owned by the Town for the purpose of constructing a walkway to cross the dunes and gain access to the beach. Hillside Drive lies under the dune there. Before they can get a permit to build a walkway, the Board would have to approve an encroachment agreement.

Staff recommends approval of the agreement.

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made the ____ day of _____ 2017, by and between the TOWN OF HOLDEN BEACH, NORTH CAROLINA, party of the first part (hereinafter referred to as "TOWN"); and Windell Ray & Caryn Michelle Gibson, party to the second part.

WITNESSETH

THAT WHEREAS, the party of the second part desires to encroach upon the Hillside Drive public right-of-way owned by the TOWN for the purpose of constructing a walkway to cross the dunes and gain access to the beach; and

WHEREAS, the TOWN COUNCIL at public session has authorized the encroachment for the purpose specified and is in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the TOWN hereby grants to the party of the second part, upon the terms and conditions hereinafter set forth, the right and privilege to encroach upon the Hillside Drive right-of-way adjacent to Lot 61, Ocean Block , L, S. Holden Beach Subdivision, as shown upon the map recorded in Map Book 2 – ½ at Page 158 of the Brunswick County Registry.

1. The party of the second part agrees to obtain all necessary permits and shall be responsible for all costs involved in construction and permitting of the said walkway.
2. The party of the second part agrees to indemnify and hold harmless the TOWN for any and all damages and claims for damage that may arise by reason of the construction or use of this encroachment.
3. The TOWN will assume no liability for any damage that may be caused to such facilities by reason of any construction within the public right-of-way.
4. The party of the second part agrees to restore all areas disturbed during construction to the satisfaction of the TOWN. The party of the second part further agrees to exercise every reasonable precaution during construction to prevent erosion and shall comply with all local ordinances, state laws and regulations and federal laws and regulations applicable to the subject property.
5. In the case of non-compliance with this agreement by the party of the second part, the TOWN reserves the right to stop all work upon the said walkway until the facility has been brought into compliance or removed from the right-of-way at no cost to the TOWN.
6. The party of the second part agrees to maintain the walkway in good repair and in a safe condition. Party of the second part further agrees to remove or repair the said walkway upon notification by the TOWN that the Building Inspector has determined that a hazardous or potentially hazardous condition exists because of the said walkway. If not repaired or removed within a reasonable period of time, the TOWN may remove the structure and charge the cost of said removal to the party of the second part.
7. If, at any time, it becomes necessary for the TOWN to resume its full and complete control of the said Hillside Drive right-of-way due to construction, repair or maintenance of the public facility, the party of the second part agrees that it shall remove the encroaching walkway at no cost to the TOWN or to pay to the TOWN the cost of such removal.

- 8. All parties hereto do agree that this agreement shall become void if the contemplated construction by the party of the second part is not begun on or before one (1) year from the date of this instrument.

IN WITNESS WHEREOF. The parties have caused this instrument to be executed as of the date first above written.

TOWN OF HOLDEN BEACH

(MUNICIPAL)

BY: _____

ATTEST:

Town Clerk

Party of the Second Part:

[Signature] (SEAL)

[Signature] (SEAL)

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, _____, a Notary Public in and for the state and county aforesaid do hereby certify that _____, personally appeared before me this day and acknowledged that she is the Clerk of the TOWN OF HOLDEN BEACH and that, by authority duly given and as the act of the municipal body politic, the foregoing instrument was signed in its name by its Town Manager, sealed with its municipal seal and attached by herself as its Clerk.

WITNESS my hand and official seal this ____ day of _____, 2017.

My Commission expires: _____

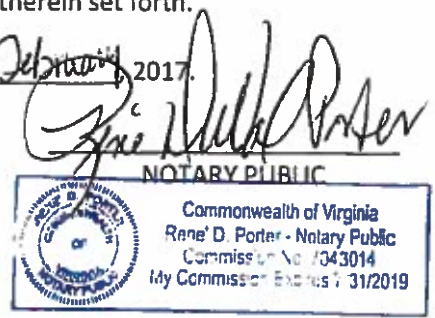
STATE OF VIRGINIA
COUNTY OF Charlottesville

I, Rene D. Porter, NOTARY OF PUBLIC, do hereby certify that Windell Ray & Caryn Michelle Gibson, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein set forth.

Witness my hand and notarial seal this 20th day of February, 2017.

My commission expires:

7/31/2019



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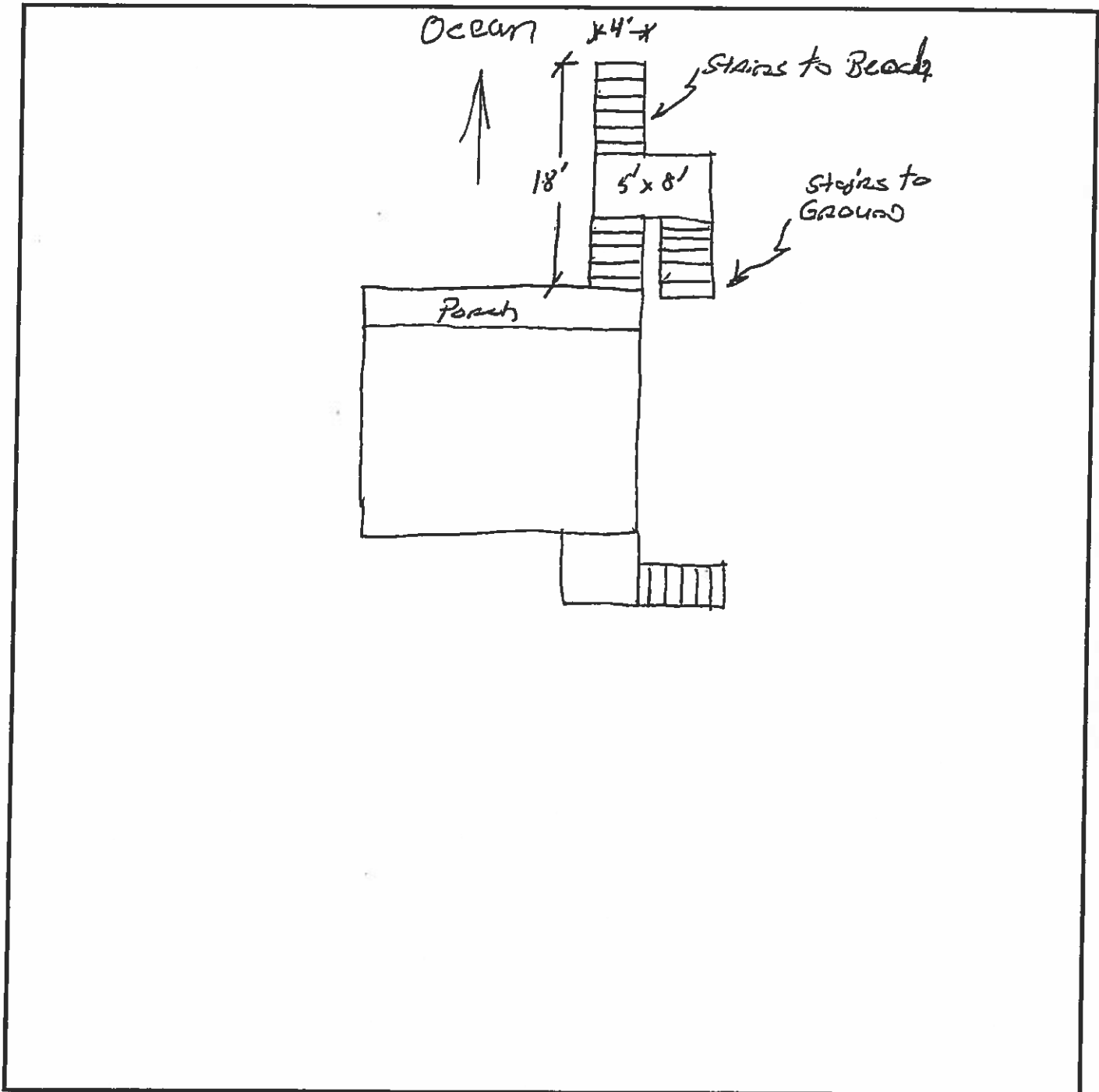
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Date: March 21, 2017

To: Commissioners and Mayor Holden

From: Mandy Lockner, Fiscal Operations II

ML

Re: Resolution Supporting Seasonal Population Adjustment Factor for Sales Tax

The town's portion of sales tax and state revenues are based on population estimates. The use of official population estimates does not accurately reflect the significant economic contributions, sales tax payments and service demands associated with our second homeowners and visitors. Therefore the Town does not benefit from state distributive revenues because our population numbers are low.

S126 was introduced to the North Carolina Senate and would eliminate the current population factor and replace it with a new adjustment tied to the NC economic development tier system. This is harmful to tourism-dependent communities in that it could result in a significant loss of sales tax revenue. The attached resolution urges the Board to recommend the NC General Assembly to enact legislation to establish a "seasonal population adjustment factor" to the distribution of sales tax revenues. In supporting this addition, the town may benefit in increased revenue because the population estimates will be higher.



RESOLUTION 17-03
RESOLUTION SUPPORTING SEASONAL POPULATION ADJUSTMENT FACTOR
FOR
SALES TAX AND OTHER STATE REVENUE DISTRIBUTION

Whereas, the State's current sales tax distribution formula among the 100 counties is based 75% on the point-of-delivery / point-of-sale and 25% on the official population estimates of the counties; and

Whereas, the use of official population estimates for the distribution of sales tax and other State revenues harms tourism-dependent communities like Holden Beach and Brunswick County that have low official population estimates, but have a significant population of second home owners and visitors and

Whereas, these second home owners and visitors make significant economic contributions, significant sales tax payments, and place significant service demands on our community; and

Whereas, tourism-dependent communities like Holden Beach and Brunswick County are structured to provide infrastructure and services to the entire population, which includes permanent residents and the significant population of second home owners and visitors; and

Whereas, the 25% portion of the sales tax distribution that is based on the official population estimates currently includes a population adjustment factor aimed at least somewhat at addressing this concern; and

Whereas, S126, introduced in the North Carolina Senate, would eliminate the current population adjustment factor and replace it with a new adjustment tied to the NC economic development tier system, and would reduce Brunswick County's adjustment factor from 1.17 to 0.90; and

Whereas, S126 is harmful to tourism-dependent communities like Holden Beach and Brunswick County, and does not accurately reflect the significant economic contributions, significant sales tax payments, and significant service demands of the significant population of second home owners and visitors in our community; and

Whereas, S126 could result in an annual loss of sales tax revenues of up to \$8,834 annually for Holden Beach; and

Whereas, Brunswick County, its 19 municipalities and Brunswick County Schools could collectively lose up to \$2.6 million annually if S126 ultimately becomes law; and

Whereas, S126 would result in the redistribution of millions of dollars of sales tax revenue away from tourism-dependent communities to provide additional revenue to rural counties in North Carolina; and

Whereas, the goal of S126 to assist rural counties is noble, and the Town of Holden Beach supports this goal, however, any such assistance should be included in a State-funded strategy rather than a redistribution of **local** sales tax revenues; and

Whereas, the proposed change will have a negative impact on the ability of Holden Beach, and other tourism-dependent communities to meet service demands, maintain quality of life, and remain competitive in the tourism and retirement markets; and

Whereas, the Town of Holden Beach supports the use of a “seasonal population adjustment factor” to be applied to the distribution of sales tax revenues and other State revenues that are distributed to NC counties and municipalities on the basis of population.

Now, therefore, be it resolved that the Holden Beach Board of Commissioners hereby urges the NC General Assembly to utilize an alternative State-funded strategy to provide additional revenue to rural counties in North Carolina instead of enacting S126.

Be it further resolved that the Holden Beach Board of Commissioners hereby urges the NC General Assembly to enact legislation establishing a “seasonal population adjustment factor” to be applied to the distribution of sales tax revenues and other State revenues distributed to all NC counties and municipalities on the basis of population.

Be it further resolved that such “seasonal population adjustment factor” could be applied by adjusting the official population estimate for all 100 counties and all municipalities in the State by adding an amount equal to two (2) times the number of housing units for each jurisdiction that are reported for “seasonal, recreational, or occasional use” in the most recent decennial US Census.

Adopted this the 21st day of March, 2017.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

S

1

SENATE BILL 126

Short Title: Change the LOST Adjustment Factor. (Public)

Sponsors: Senators Brown (Primary Sponsor); Britt, J. Davis, McInnis, and Rabin.

Referred to: Rules and Operations of the Senate

February 23, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE LOCAL OPTION SALES TAX (LOST) ADJUSTMENT FACTOR
3 TO ONE THAT VARIES BY ECONOMIC DEVELOPMENT TIERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-486(b) reads as rewritten:

6 "(b) Adjustment. – The Secretary shall then adjust the amount allocated to each county
7 under subsection (a) by multiplying the amount by the appropriate adjustment factor set out in the
8 table below. The adjustment factor is based on the development tier designation of the county
9 under G.S. 143B-437.08. The development tier designation of a county is effective for the fiscal
10 year following the designation. If, after applying the adjustment factors, the resulting total of the
11 amounts allocated is greater or lesser than the net proceeds to be distributed, the amount allocated
12 to each county shall be proportionally adjusted to eliminate the excess or shortage.

| <u>County Area Development Tier</u> | <u>Adjustment Factor</u> |
|--|--------------------------|
| 14 <u>Development tier one</u> | 1.10 |
| 15 <u>Development tier two</u> | 1.00 |
| 16 <u>Development tier three</u> | 0.90 |
| 17 Dare | 1.49 |
| 18 Brunswick | 1.17 |
| 19 Orange | 1.15 |
| 20 Carteret and Durham | 1.14 |
| 21 Avery | 1.12 |
| 22 Moore | 1.11 |
| 23 Transylvania | 1.10 |
| 24 Chowan, McDowell, and Richmond | 1.09 |
| 25 Pitt and New Hanover | 1.07 |
| 26 Beaufort, Perquimans, Buncombe, and Watauga | 1.06 |
| 27 Cabarrus, Jackson, and Surry | 1.05 |
| 28 Alleghany, Bladen, Robeson, Washington, Craven, Henderson, | 1.04 |
| 29 Onslow, and Vance | |
| 30 Gaston, Granville, and Martin | 1.03 |
| 31 Alamance, Burke, Caldwell, Chatham, Duplin, Edgecombe, | 1.02 |
| 32 Haywood, Swain, and Wilkes | |
| 33 Hertford, Union, Stokes, Yancey, Halifax, Rockingham, and | 1.01 |
| 34 Cleveland | |
| 35 Alexander, Anson, Johnston, Northampton, Pasquotank, Person, | 1.00 |
| 36 Polk, and Yadkin | |



General Assembly Of North Carolina
Session 2017

| | | |
|----|--|-------|
| 1 | Catawba, Harnett, Iredell, Pamlico, Pender, Randolph, Stanly, and | 0.99 |
| 2 | Fyrrell | |
| 3 | Cherokee, Cumberland, Davidson, Graham, Hyde, Macon, | 0.98 |
| 4 | Rutherford, Scotland, and Wilson | |
| 5 | Ashe, Bertie, Franklin, Hoke, Lincoln, Montgomery, and Warren | 0.97 |
| 6 | Wayne, Clay, Madison, Sampson, Wake, Lee, and Forsyth | 0.96 |
| 7 | Caswell, Gates, Mitchell, and Greene | 0.95 |
| 8 | Currituck and Guilford | 0.94 |
| 9 | Davie and Nash | 0.93 |
| 10 | Rowan and Camden | 0.92 |
| 11 | Jones | 0.90 |
| 12 | Mecklenburg | 0.89 |
| 13 | Lenoir | 0.88 |
| 14 | Columbus | 0.81" |
| 15 | SECTION 2. This act becomes effective July 1, 2017, and applies to local option | |
| 16 | sales taxes collected on or after that date and distributed to counties and cities on or after | |
| 17 | September 1, 2017. | |



Date: March 13, 2017

To: Commissioners and Mayor Holden

From: Christy Ferguson, Shoreline Protection and Recreation Manager (17)

Re: State Revenue Source for Beach Nourishment

There is currently no State Revenue Source for Beach Nourishment. Over the past several years, NC politicians and leaders have repeatedly discussed the issue to exhaustion. With the Shallow Draft Inlet Fund now serving as a model for how such a fund could work, the question remained as to the source of the funding.

The NC Beach and Inlet Management Plan (BIMP) was updated in December of 2016, <https://deq.nc.gov/about/divisions/coastal-management/coastal-management-oceanfront-shorelines/beach-inlet-management-plan>. The document recommends the establishment of a dedicated State beach nourishment fund with a dedicated State funding source to assist local governments with the significant expense of beach nourishment. The Town of Holden Beach knows firsthand how staggering the cost of such projects can be based on our current project. According to the BIMP, the following historical data points are listed for Holden Beach:

- First year on record for nourishment was 1971.
- Nourished a total of 49 times from 1955-2015.
- Average Cost per year of \$483,342 from 1955-2015.

The BIMP identifies 5 potential dedicated funding sources derived from the 8 oceanfront counties for a new State beach nourishment fund. Of these sources, staff recommends the Holden Beach Board of Commissioners urge the NC General Assembly to enact legislation to either:

1. Reallocate 50% of the existing State sales tax collections on short-term lodging sales ONLY from the 8 oceanfront counties, which will generate an estimated \$25.2 million annually.
2. Establish a new seasonal half-percent (0.5%) State sales tax on all sales in the 8 oceanfront counties ONLY during the months of May, June, July, August, and September, which will generate an estimated \$25 million annually.

Staff recommendation is to approve the resolution.

1. Resolution 17-04



RESOLUTION 17-04
RESOLUTION SUPPORTING DEDICATED
STATE REVENUE SOURCE FOR BEACH NOURISHMENT

Whereas, North Carolina beaches and inlets fuel the vital tourism industry along the NC coast, and provide total economic benefit of more than \$6 billion annually, support more than 65,000 jobs, and generate approximately \$188 million of State tax revenue annually; and

Whereas, the Town of Holden Beach recognizes the vital importance of the beach to the Town's economic success and quality of life and is committed to a long-term beach nourishment program to protect its most important asset; and

Whereas, the December 2016 update of the State's Beach and Inlet Management Plan (BIMP) recommends the establishment of a dedicated State beach nourishment fund with a dedicated State funding source to assist local governments with the significant expense of beach nourishment; and

Whereas, the BIMP identifies an annual need of approximately \$25 million to enable the State to provide 50% matching funds to local governments to complete projected future beach nourishment projects, and

Whereas, the BIMP identifies 5 potential dedicated funding sources derived from the 8 oceanfront counties for a new State beach nourishment fund, including

- a new seasonal State sales tax,
- a new State ad valorem tax,
- a new State meals tax,
- a new State land transfer fee, and
- the reallocation of existing State sales tax collections on short-term lodging sales,

Now, therefore, be it resolved that the Holden Beach Board of Commissioners hereby supports the establishment of a dedicated State beach nourishment fund with a dedicated State funding source sufficient to provide 50% matching funds to local governments.

Be it further resolved that the Holden Beach Board of Commissioners hereby urges the NC General Assembly to enact legislation to either

- 1) reallocate 50% of the existing State sales tax collections on short-term lodging sales ONLY from the 8 oceanfront counties, which will generate an estimated \$25.2 million annually

OR

- 2) establish a new seasonal half-percent (0.5%) State sales tax on all sales in the 8 oceanfront counties ONLY during the months of May, June, July, August, and September, which will generate an estimated \$25 million annually.

Adopted this the 21st day of March, 2017.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

Heather Finnell

From: Cane Faircloth <canefaircloth@hotmail.com>
Sent: Monday, March 13, 2017 11:40 AM
To: Heather Finnell
Subject: HB Town Comissioners meeting

Hi Heather,

Myself and other area boaters are gravely concerned about the Lockwood Folly Inlet. It is in its most treacherous state in our lifetimes and only getting worse. I would like to be put on the agenda to speak at the next Holden Beach town commissioners meeting. I have been in contact with the Bruns Co. mgrs and commissioners also and hope by working together we can keep this vital inlet to the ocean open for us and generations to come.

All the best,

Capt. Cane Faircloth
Ollie Raja Charters
910/367/2998
3123 Old Ferry Rd SW
Holden Beach, NC 28462



Date: March 13, 2017

To: Board of Commissioners

Cc: David W. Hewett, Town Manager; Margaret Lancaster, Fiscal Operations Clerk III

From: Carey Redwine; Fiscal Operations Clerk I

Ref: Vehicle Decals

In the aftermath of Hurricane Matthew it became apparent that the issuing of vehicle decals needed to be addressed and updated. The following are the proposed changes to the fee schedule.

Vehicle Decals - Residents currently receive 4 free decals in the February water bill. Residents can also purchase additional decals for \$5.00 each before May 31st and \$10.00 each after June 1st. For full time renters, the property owner must get the decals and distribute accordingly. Staff is proposing that only 2 free decals be mailed in the water bill and residents can purchase up to 2 additional decals for \$10.00 each. For full time renters, the property owner can get the first 2 decals for free and up to 2 additional decals at \$10.00 each and must distribute accordingly.

Vehicle Decals – On Island Businesses currently can purchase decals at \$5.00 each before May 31st and \$10.00 each after June 1st. Staff is proposing that the cost is changed to \$10.00 each regardless of timing.

Vehicle Decals – Off Island Businesses currently can purchase decals at \$5.00 each before May 31st and \$10.00 each after June 1st. Staff is proposing that the cost is changed to \$10.00 each regardless of timing.

**RESOLUTION 17-05
RESOLUTION AMENDING THE FEE SCHEDULE FOR THE TOWN OF HOLDEN
BEACH**

WHEREAS, based on review of access to the Island after Hurricane Matthew, it is desired to streamline the administration of issuing vehicle decals to property owners, residents and businesses by revising the fee schedule and limiting the number of decals authorized accordingly.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Town of Holden Beach, North Carolina hereby amends the Fee Schedule for the Town of Holden Beach by deleting the current section relating to “Vehicle Decals” in its entirety and establishing the new section titled “ Vehicle Decals” attached hereto.

This the 21st day of March, 2017.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk

Revised Fee Schedule:

| | |
|---|--------------|
| Vehicle Decals | |
| First 2 decals | \$0 |
| Additional decals (2 more max per property) | \$10.00 each |
| On Island Business | \$10.00 each |
| Off Island Business | \$10.00 each |
| Replacement Stickers | \$5.00 each |



Date: March 21, 2017

To: Commissioners and Mayor Holden

From: Mandy Lockner, Fiscal Operations II *ML*

Re: T-Mobile Contract

The Town's water tower lease agreement with T-Mobile/ Black Dot has expired. The proposed agreement is a continuation of the expired lease with a lesser payment of \$1000.00 as opposed to the current payment of \$1505.00. They are requesting the agreement be renewed for another five years at the proposed lower rent.

The current yearly revenue from T-Mobile is \$18,062; approving the contract would result in a revenue loss of approximately \$6,000.

| WIRELESS COMPANY | YEARLY RENT |
|------------------|-------------|
| ATMC | \$29,028 |
| VERIZON | \$36,572 |
| US CELLULAR | \$18,889 |
| TMOBILE | \$18,062 |



LEASE EXTENSION PROPOSAL – TERM SHEET

To: Heather
From: Brett Smith on behalf of T-Mobile
Subject: Site #: 5WI0469A | Lease #: 109718 | Focus #: WS-300393.1
Date: February 9, 2017

On the terms and conditions set forth below, T-Mobile would consider extending its existing lease agreement for the site located at:

Property / Site Address: 122 Rothschild Street Holden Beach, North Carolina 28462

Current Term Expiration Date: Sep 30, 2017

New Rent

| | | |
|----|--------------------------|------------|
| A. | New Base Rent | \$1,000.80 |
| B. | New Rent Frequency | Monthly |
| C. | New Escalations | 10 % |
| D. | New Escalation Frequency | Term |

New Term

| | | |
|----|------------------------------|----|
| A. | Number of Renewal Terms | 5 |
| B. | Renewal Term Length (months) | 60 |

Rent Guarantee Period

| | | |
|----|--------------------------------|-------------|
| A. | Rent Guarantee Period (months) | 36 |
| B. | Rent Guarantee Value | \$36,028.80 |

Other

- A. Please verify or write in the correct legal ownership for this Property. Is this correct? Yes / No
Town Of Holden Beach
- B. Please verify or write in the correct address for the Property where the Site is located. Is this correct? Yes / No
122 Rothschild Street Holden Beach, North Carolina 28462
- C. Please verify or write in the correct address for notice and correspondence. Is this correct? Yes / No
110 Rothschild Holden Beach, North Carolina 28462

Landlord Initial: _____

Tenant Initial: _____

****This proposal will expire at the close of business 10 days from the date of this Term Sheet unless extended by a T-Mobile officer or director. Landlord may consent to the above terms outlined above by initialing as indicated above and returning to T-Mobile (add POC). Please note that this proposal is not a binding commitment and is subject to review and approval of documentation by all parties. Participation in this program is not required and T-Mobile will continue to abide by the terms of the original Lease Agreement between the parties, including exercising termination rights where they exist. If the parties agree to move forward with the proposed lease extension, they will enter into a mutually acceptable lease amendment, which documents the agreed upon terms and conditions in this Term Sheet.**

[NUMBER OF AMENDMENT] AMENDMENT TO [LEASE TITLE]

This [NUMBER OF AMENDMENT] Amendment to [LEASE TITLE] ("**Amendment**") is effective as of the date of execution by the last party to sign (the "**Effective Date**") by and between [LL VESTING], a [LL ENTITY] ("**Landlord**") and [TMO VESTING], a [TMO ENTITY] ("**Tenant**").

Landlord and Tenant (or their predecessors-in-interest) entered into that certain [LEASE TITLE] dated [DATE], (including all prior amendments) (the "**Lease**") regarding premises located at [ADDRESS] (the "**Premises**"), and

Landlord and Tenant desire to amend the Lease on the terms and conditions set forth herein.

NOW, for good and valuable consideration, Landlord and Tenant agree as follows:

1. **Rent.** Commencing on _____ 1, 2017, Tenant shall pay Landlord _____ dollars (\$___) per month ("**Rent**") in advance, by the fifth (5th) day of each month. Where duplicate Rent would occur, a credit shall be taken by Tenant for any prepayment of Rent by Tenant. Rent shall be adjusted, effective on the first day of each successive Renewal Term, to an amount equal to _____ percent (___ %) above the Rent for the immediately preceding Renewal Term.

2. **Renewal Terms.** At the expiration of the Lease, the Term of the Lease will automatically be extended for _____ additional and successive _____ year terms (each a "**Renewal Term**"), unless Lessee notifies Lessor in writing of Lessee's intention not to extend the Lease at least thirty (30) days prior to the expiration of any Renewal Term.

3. **Modification of Tenant's Obligation to Pay – Rent Guarantee.** Commencing on _____ 1, 2017, Tenant's obligation to pay Rent is guaranteed for a period of _____ (___) years ("**Rent Guarantee Period**"). Tenant's obligation to pay Rent is guaranteed and this obligation shall not be subject to offset or cancellation by Tenant unless any of the following exceptions apply: a) local, state or federal laws adversely affect Tenant's ability to operate; (b) the Premises or Antenna Facilities are damaged or destroyed by wind, fire or other casualty and the Premises cannot be restored within a six-month time period; c) the Property is foreclosed upon and Tenant' is unable to maintain its' tenancy; d) Landlord requires Tenant to relocate its Antenna Facilities which adversely affect Tenant's ability to operate the Antenna Facilities; or e) Landlord breaches the Lease and the default issue is not cured within the appropriate cure period. This Rent Guarantee shall not apply to any increases in the Rent after the execution of this Amendment.

4. **Access.** Landlord shall furnish, at no additional charge to Tenant, unimpeded access to the Premises on a 24-hours-a-day, 7-days-a-week basis to Tenant and Tenant's employees, agents, contractors and other designees.

5. **Permitted Use.** The Premises may be used for: (a) the transmission and reception of communication signals; and (b) the construction, installation, operation, maintenance, repair, addition, upgrading, removal or replacement of any and all Antenna Facilities (collectively, the "Permitted Uses").

6. **Expansion.** Tenant shall have the right to enlarge the Premises, to the extent practicable, so that Tenant may implement any necessary upgrades and additions ("Additional Premises"), for an increased monthly rent of \$1.50 per square foot. Addition of coaxial cables, raceways, conduits and other ancillary equipment shall not require increased Rent.

7. **Notice.** All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/
<SITE NUMBER>

If to Landlord, to:

<LL Name>
<LL Mailing Address>
<City, State, Zip>

8. **Termination.** Tenant may terminate this Agreement without further liability, upon thirty (30) days prior written notice to Landlord, for any of the following reasons: (i) changes in local or state laws or regulations which adversely affect Tenant's ability to operate; (ii) a Federal Communications Commission ("FCC") ruling or regulation which is beyond the control of Tenant; (iii) technical or economic reasons; or (iv) if Tenant is unable to obtain any Governmental Approval required for the construction or operation of Tenant's Antenna Facilities. Additionally, upon ninety (90) days prior written notice to Landlord, Tenant may terminate this Agreement for any or no reason.

9. **Tenant Assignment.** Tenant shall have the right to assign, or otherwise transfer this Agreement, upon Tenant's delivery to Landlord of written notice of any assignment, or transfer by Tenant. Tenant shall be relieved of all liabilities and obligations and Landlord shall look solely to the assignee, or transferee for performance under this Agreement. Upon receipt

of a written request from Tenant, Landlord shall promptly execute an estoppel certificate. Tenant shall have the right to sublease the Agreement without the need for Landlord consent.

10. **Bandwidth.** Tenant shall have the right to transmit and receive on any and all frequencies for which Tenant has been granted a license by the FCC.

11. **Memorandum of Lease.** Landlord will execute a Memorandum of Lease at Tenant's request. If the Property is encumbered by a deed, mortgage or other security interest, Landlord will also execute a subordination, non-disturbance and attornment agreement.

12. **Miscellaneous.**

a. Any charges payable under this Agreement other than Rent shall be billed by Landlord to Tenant within twelve (12) months from the date in which the charges were incurred or due; otherwise the same shall be deemed time-barred and be forever waived and released by Landlord.

b. Landlord and Tenant will reasonably cooperate with each other's requests to approve permit applications and other documents related to the Property.

c. To the extent any provision contained in this Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall control. Unless otherwise defined herein, capitalized terms used in this Amendment have the same meanings they are given in the Lease.

d. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

e. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic copies of this Amendment will legally bind the parties to the same extent as originals.

f. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment. Landlord represents and warrants to Tenant that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this Amendment.

g. This Amendment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

IN WITNESS, the parties execute this Amendment as of the Effective Date.

LANDLORD:

TENANT:

[INSERT NAME],

[T-MOBILE ENTITY],

a _____

a Delaware _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date:

Date:

T-Mobile Legal Approval

SAMPLE